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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

AUG 22 2006

UICs: 401.06-00
401.06-02

T: EP: RA: T3

LEGEND:

Decedent =
Wife =
Son =
Sister =
Trustee 2 =

Company 1 =

State =
County =
Court =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =

Trust T =

IRA X =

Amount 1 =
Amount 2 =

Settlement Agreement =

Dear :

This is in response to the _____, letter, as supplemented by correspondence dated _____, in which you, through your authorized representative, request a letter ruling under section 401(a)(9) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

FACTS:

Decedent who was born on Date 1, 1938, died on Date 2, 2001 a resident of State, without having attained age 70 ½. Decedent was survived by his spouse, Wife, whose date of birth was Date 5, 1942.

On Date 3, 2000, Decedent had opened an individual retirement account ("IRA"), IRA X, with Company 1. The IRA agreement designated a trust, Trust T, dated Date 4, 1995, as the primary beneficiary his IRA X. Prior to his death, Decedent had not received any distributions from his IRA X. As of the date of decedent's death, IRA X had a value of approximately Amount 1.

Provisions of Article I of Trust T, as reformed, indicate that Trust T became irrevocable at the death of Decedent. Additionally, section 6.7 of Trust T, as reformed, provides that Trust T was intended to be valid under the laws of State.

Subsequent to Decedent's death, litigation ensued in Court of County of State between the beneficiaries of Trust T to determine the rights of the trustees and beneficiaries of Trust T. The litigation led to the parties entering into Settlement Agreement which reformed Trust T. The terms of the Settlement Agreement were effective as if originally incorporated in Trust T. Pursuant to said reformation, Wife is treated as the beneficiary of Trust T entitled to receive distributions from Decedent's IRA X.

The trustee of Trust T, initially Sister, is required to request a distribution option pursuant to which amounts sufficient to satisfy the minimum distribution requirements of Code section 401(a)(9) using Wife's life expectancy will be distributed from IRA X, and which requires that IRA X distributions will be made no less frequently than quarterly. Additionally, Wife has the power to compel the distribution of IRA X income if greater than Code section 401(a)(9) required distributions. Furthermore, the Trust T trustee, Sister, has the sole discretion to distribute out of Trust T income and principal amounts necessary and proper for the health, support in reasonable comfort and maintenance of Wife. Wife was also given the right to request, in writing, the withdrawal of IRA X assets. Finally, the reformed Trust T provided that upon the death of Wife amounts remaining in IRA X were to be paid to her living lineal descendants, per stirpes. It has been represented that the reformation of Trust T complied with the laws of State.

On Date 8, 2004, Sister was replaced as trustee of Trust T by Trustee 2.

Pursuant to the terms of the reformed Trust T, Wife began receiving monthly distributions from IRA X. Wife died on Date 6, 2004 without having attained age 70 ½. At that time, the value of IRA X was approximately Amount 2. Wife was survived by one lineal descendant, Son, whose date of birth was Date 7, 1963. Wife had not named a beneficiary of her interest in IRA X prior to her death.

RULING REQUESTED:

1. That the life expectancy of Son may be used to determine the Code section 401(a)(9) minimum required distributions from IRA X for years subsequent to the year of Wife's death.

LAW AND ANALYSIS:

With respect to your ruling request, Code section 408(a)(6) provides that, under regulations prescribed by the Secretary, rules similar to the rules of Code section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Code section 401(a)(9)(A) provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee --

- (i) will be distributed to such employee not later than the required beginning date, or
- (ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) of the Code provides, in relevant part, that, for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 1/2.

Code section 401(a)(9)(B)(ii) provides, in general, that if a plan participant (IRA holder) dies before the distribution of his interest has begun in accordance with subparagraph (A)(ii) (before his required beginning date), his plan or IRA interest remaining at his death must be distributed within five years after the death of such employee (IRA holder).

Code section 401(a)(9)(B)(iii) provides, in general, for an exception to the 5-year rule (above) with respect to distributions paid to (or for the benefit of) a designated beneficiary of a deceased plan participant or IRA holder. Pursuant to this exception, distributions must begin no

later than 1 year of the employee's or IRA holder's death (or such later date as prescribed in regulations), and must be made over the life or life expectancy of the designated beneficiary.

Code section 401(a)(9)(B)(iv) provides, in general, for a rule applicable in the situation where a plan participant or IRA holder dies prior to his required beginning date having designated his spouse as the beneficiary of his plan or IRA interest. Pursuant to said exception, distributions from the deceased's plan are required to begin no earlier than the date on which the deceased would have attained age 70 ½, and if the surviving spouse dies prior to the date on which distributions are to begin, this subparagraph is to be applied as if the surviving spouse were the employee or IRA holder.

With further respect to your ruling request, "Final" Income Tax Regulations under Code sections 401(a)(9) and 408(a)(6) were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the "Final" Regulations, in relevant part, provide that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003[.]

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4, provides, in relevant part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of (the employee's or IRA holder's) death. Generally, an employee's designated beneficiary will be determined based on the beneficiaries designated as of the date of death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death. Consequently, any person who was a beneficiary as of the date of the employee's death, but is not a beneficiary as of that September 30 (e.g. because the person receives the entire benefit to which the person is entitled before that September 30) is not taken into account in determining the employee's designated beneficiary for purposes of determining the distribution period for required minimum distributions after the employee's death. Accordingly, if a person disclaims entitlement to the employee's benefit pursuant to a disclaimer that satisfies § 2518 by that September 30 thereby allowing other beneficiaries to receive the benefits in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-3, provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9). A person who is not an individual, such as the employee's estate, may not be a designated beneficiary. However, Q&A-5 of section 1.401(a)(9)-4 provides that beneficiaries of a trust with respect to the trust's interest in an employee's benefit may be treated as designated beneficiaries as long as certain requirements are met.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-5(b) provides the requirements which are:

- (1) the trust is valid under state law or would be but for the fact there is not corpus;

- (2) the trust is irrevocable or becomes so at the death of the plan participant or IRA holder;
- (3) the beneficiaries of the trust with respect to the plan or IRA interest are identifiable from trust terms; and
- (4) the plan administrator or IRA custodian has been provided with either a copy of the trust document or a list of trust beneficiaries.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-2, provides that in order to satisfy the 5-year rule of Code section 401(a)(9)(B)(ii), the entire remaining interest of the plan participant or IRA holder must be distributed no later than the end of the calendar year which contains the fifth anniversary of the death of the plan participant or IRA holder.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(b) provides, in summary, that if an employee dies before his required beginning date, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is determined in accordance with paragraph (c) of thus A-5.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-5(c)(2), provides, in general, that, with respect to an employee who has designated his spouse as his sole beneficiary, the applicable distribution period measured by the beneficiary's remaining life expectancy is determined using the beneficiary's age as of the beneficiary's birthday in the each calendar year after the calendar year of the employee's death up to and including the calendar year of the spouse's death. In subsequent years, the applicable distribution period is the life expectancy of the spouse using the age of the spouse in the calendar year of the spouse's death reduced by one for each calendar year that has elapsed after the calendar year of the spouse's death.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7, provides, in general, that if more than one beneficiary is designated as a beneficiary by an employee as of the applicable date for determining the designated beneficiary under A-4 of § 1.401(a)(9)-4, the beneficiary with the shortest life expectancy will be the designated beneficiary for purposes of determining required distributions.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(b), provides, that except as provided in paragraph (c)(1) of this A-7, contingent beneficiaries of the interest of a plan participant or IRA holder must be considered for purposes of determining which life expectancy to use for purposes of computing minimum required distributions.

Section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(c), provides that a person will not be considered a beneficiary for purposes of computing Code section 401(a)(9) minimum required distributions merely because the person could become the successor to the interest of

one of the employee's or IRA holder's beneficiaries after the death of said beneficiary. However, this rule does not apply to a person who has any right (including a contingent right) to an employee's benefit beyond being a mere potential successor to the interest of a beneficiary of a plan participant or IRA holder.

Section 1.401(a)(9)-3 of the "Final" regulations, Q&A-5, provides that if a plan participant's or IRA holder's surviving spouse is his sole beneficiary, and said spouse dies after the plan participant or IRA holder but before distributions have begun under section 401(a)(9)(B)(iii) and (iv), the five-year rule of section 401(a)(9)(B)(iii) and the life expectancy rule of section 401(a)(9)(B)(iv) are to be applied as if the surviving spouse were the plan participant or IRA holder.

Section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(b), provides that if A-5 of section 1.401(a)(9)-3 applies, the relevant designated beneficiary for determining the distribution period after the death of the surviving spouse is the designated beneficiary of the surviving spouse. If as of September 30 of the calendar year following the calendar year of the death of the surviving spouse there is no designated under the plan or IRA with respect to said surviving spouse, distributions must be made in accordance with the 5-year rule of Code section 401(a)(9)(B)(ii) and A-2 of section 1.401(a)(9)-3.

Section 1.401(a)(9)-9 of the "Final" regulations, Q&A-1, provides the relevant Single Life Expectancy Table.

In this case, as noted above, under Trust T, as reformed, Wife was entitled to receive annual distributions from IRA X intended comply with the minimum distribution requirements of Code sections 401(a)(9) and 408(a)(6) using Wife's life expectancy. Additionally, Wife had the right to request distribution of IRA X amounts during her life without limitation. Thus, under said Trust T, as reformed, any and all distributions to be made to Trust T during Wife's life were to be paid to Wife and, as a result, Son's interest in IRA X was limited to amounts remaining in IRA X at Wife's death. Thus, Son's rights to amounts from IRA X were the rights of a "successor beneficiary", as that term is defined in section 1.401(a)(9)-5 of the "Final" regulations, Q&A-7(c). As a result, Son need not be considered for purposes of determining who is the designated beneficiary of Decedent's IRA X.

Furthermore, as noted above, Wife died prior to the date Code section 401(a)(9) required distributions to her were required to begin. Additionally, Wife did not name a beneficiary of her interest in IRA X. Thus, as a result, pursuant to section 1.401(a)(9)-4 of the "Final" regulations, Q&A-4(b), the 5-year rule of Code section 401(a)(9)(B)(ii) applies to the distribution of amounts remaining in IRA X at her death.

CONCLUSION:

Accordingly, based on the facts presented and the representations made, we conclude with respect to your ruling request:

1. That the life expectancy of Son may not be used to determine the Code section 401(a)(9) minimum required distributions from IRA X for years subsequent to the year of Wife's death.

This ruling letter is based on the assumption that IRA X referenced herein either was or is valid within the meaning of Code section 408 at all times relevant thereto. It also assumes the correctness of all facts and representations contained therein.

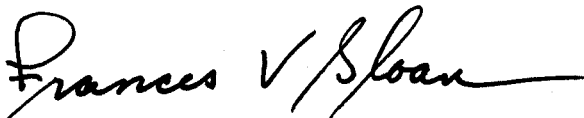
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with the Service, the original of this letter ruling is being sent to you and a copy to your authorized representatives.

If you wish to inquire about this ruling, please contact _____, Esq. (I.D. # _____), at () - . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
Deleted copy of letter ruling
Notice 437